UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

JAMES CATE,)	
)	
Plaintiff,)	
)	
V.)	No. 3:02-CV-611
)	(PHILLIPS/GUYTON)
CITY OF ROCKWOOD, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This case is before the undersigned pursuant to 28 U.S.C. § 636(b), the Rules of this Court, and by Order [Doc. 66] of the Honorable Thomas W. Phillips, United States District Judge, for disposition of Plaintiff's Motion To Take Depositions. [Doc. 64]. On May 11, 2006, this Court entered an Order denying that motion. The plaintiff filed a Motion To Reconsider [Doc. 77] and the defendants filed an objection thereto. [Doc. 79].

The plaintiff seeks leave to take the deposition of Ronald D. Higgs, M.D. in order to perpetuate his testimony for use in the event of further proceedings in this Court. [Doc. 78]. For grounds, the plaintiff argues that he needs to preserve the testimony of Dr. Higgs for trial by taking his deposition now, because "Dr. Higgs' health justifies the taking of his deposition pending appeal." In support of this argument, a cardiologist treating Dr. Higgs states that Dr. Higgs, now retired from medical practice, suffers from disabling heart disease for which he has undergone numerous procedures.

The defendants argue that the plaintiff has not shown that Dr. Higgs' condition is dire

enough to justify the taking of his deposition. [Doc. 79].

Rule 27(b) of the Federal Rules of Civil Procedure allows for the taking of

depositions while a case is on appeal upon a showing that there is a danger that testimony will be

lost by delay. May v. International Bus. Associates, Inc., No. 85-3732, 1986 WL 16014 (6th Cir.

Apr. 17, 1986), cert. denied, 479 U.S. 834 (1986) (citing Arizona v. California, 292 U.S. 341, 347-

48 (1934)).

In the opinion of the Court, the plaintiff now has made a showing that the deposition

testimony of Dr. Higgs reasonably could be lost if the plaintiff is not permitted to depose him

pending appeal. Accordingly, Plaintiff's Motion To Reconsider [Doc. 77] is **GRANTED**, and this

Court's earlier Order [Doc. 70] is hereby altered and amended to **GRANT IN PART** the Motion

to Take Depositions [Doc. 64] so as to allow the deposition of Ronald D. Higgs, M.D.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton

United States Magistrate Judge